

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF &
APPENDIX**

ORIGINAL

74-2511

BPLS

United States Court of Appeals
For the Second Circuit

UNITED STATES OF AMERICA,

against

Appellee,

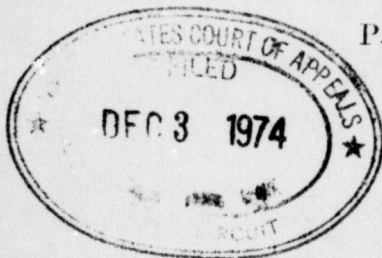
MILTON BERLINER,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPELLANT'S BRIEF

AND APPENDIX



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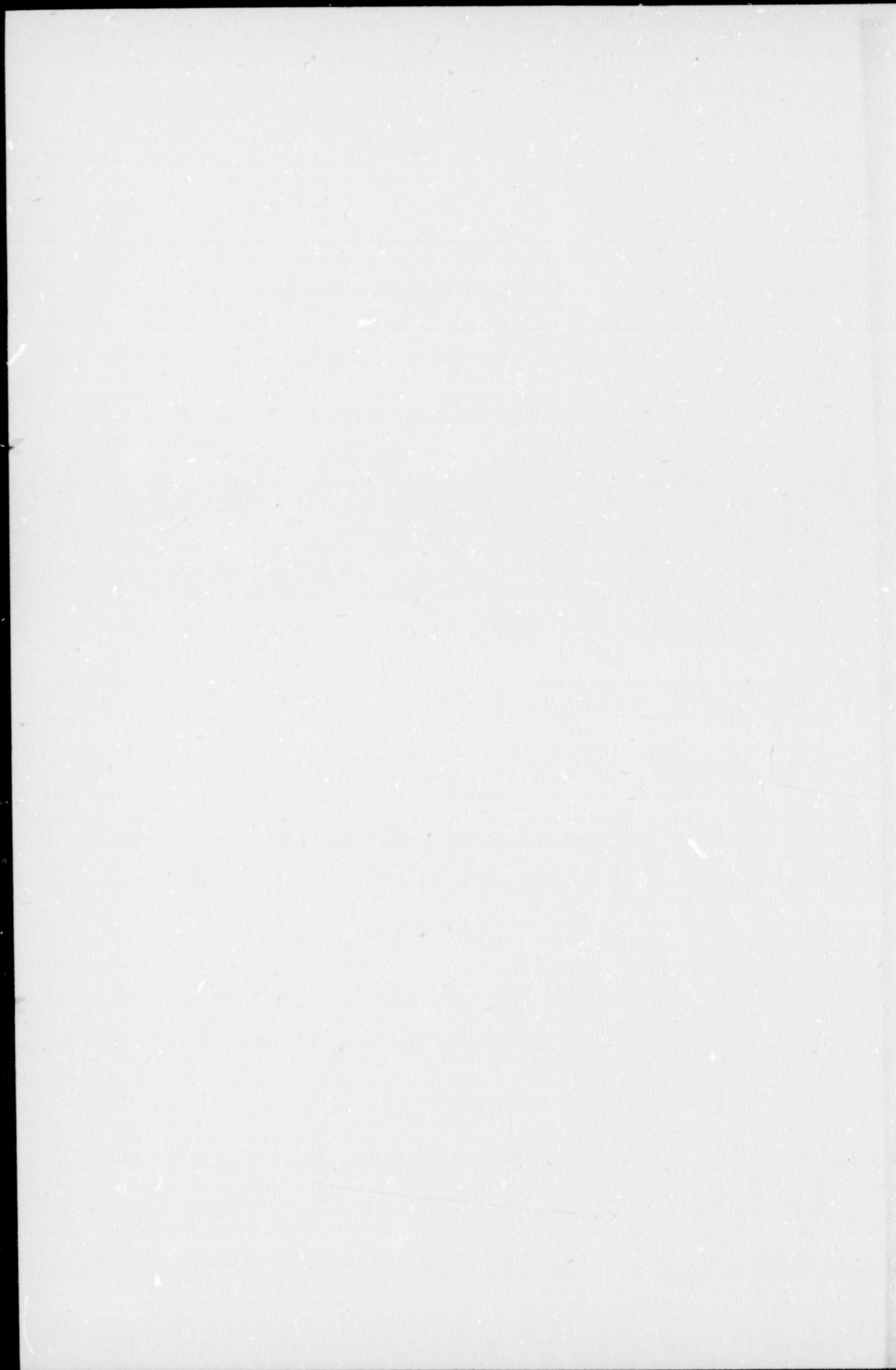
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United States Court of Appeals

FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA,

Appellee.

against

MILTON BERLINER,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPELLANT'S BRIEF

Issue Presented for Review

THERE IS ONE ISSUE FOR REVIEW IN THIS CASE:

1. Whether the Court abused its discretion in precluding counsel from fairly commenting in summation on reasonable inferences the jury could draw from the evidence, which inferences materially and competently related to a crucial issue and theory of the defendant's case, to wit: That a corporate ledger entry of \$295,264.95, containing an unidentified \$100,000.00 item attributed to the defendant-employee as severance pay, was in fact a cover up for a transfer of funds by the principals of the corporation to a Swiss bank account, so that the explanation as to it representing severance pay was as untrue as the same explanation as to other entries totaling \$63,256.00 for all sums represented reimbursement for monies advanced by the defendant on behalf of the corporation and did not represent income.

Statement of Facts

The defendant was indicted on March 23, 1972 and charged with two counts of tax evasion under Title 26 U. S. C. Sec. 7201 and two counts of filing a false and fraudulent tax return under Title 26 U. S. C. Sec. 7206(1) for the taxable years of 1965 and 1966. The trial commenced on June 26, 1974 before Hon. Thomas C. Platt in the Eastern District of New York and was concluded on July 10, 1974. The jury returned a verdict of **guilty** on all four counts on July 11, 1974 after approximately seven hours of deliberation. On October 18, 1974, defendant was sentenced to concurrent two years imprisonment per count, all but four months of the sentence suspended and three years probation.

Theory of Prosecution

To fully envision the substantiality of the issue for review and the fact that the evidence was not overwhelming, an exhaustive summary of the evidence is necessary. The defendant had been the accountant for corporations owned by three brothers, Irving, Mark and Jack Talve, from approximately 1948 to May 1966. The Talve brothers, the employers of the defendant, testified for the Government, that on or about 1964, the inefficiency of the defendant had caused his eventual discharge on about May 14, 1966, while precipitating, for purposes of anticipated severance pay, the issuance in 1965 of 7 checks, GX 3 through 9 totaling \$15,509.53; the first four checks, \$500.00, \$100.00, \$3,500.00, and \$3,500.00, the defendant was the payee and the last three checks, \$2,430.38, \$3,463.68 and \$2,006.97, the First National City Bank was the payee, the corporation allegedly paying a personal loan obligation of the defendant. Similarly, the corporation issued, in the early part of 1966

with the defendant as payee, 5 checks, GX's 10 through 14; \$10,000.00, \$10,000.00, \$7,147.00, \$6,000.00 and \$6,000.00, totaling \$39,147.00. The sum of all of the above checks were considered as part of a final settlement on May 14, 1966 when four additional checks, GX's 15 through 18, with the defendant as payee, \$50,000.00, \$25,000.00, \$25,000.00 and \$8,500.00 totaling \$108,500.00 were ultimately issued to the defendant coupled with the payment of his \$500.00 weekly salary to the end of 1966 so as to amount to a \$125,000.00 final package. None of GX's 3 through 18 had been reported as income by the defendant in his 1965 and 1966 returns. Moreover, Berliner had been paid accounting fees by private clients, which pursuant to stipulation, represented \$6,163.16 for 1965 and \$4,833.57 for 1966 and which had not been reported as income in his tax returns.

Theory of Defense

The defendant testified that all the checks issued to him from the Talve corporations were for reimbursement for monies personally loaned to Irving Talve from the period of 1952 through 1958 (Tr. 473) and for reimbursement for monies advanced on behalf of the Talve's domestic and foreign corporations from ~~1953 up to~~ April of 1966 and did not represent income (Tr. 473-474). Initially, the defendant loaned these monies because of the financial predicament of his best friend Irving Talve and later on because of the Talves' desire to protect their anonymity as to certain foreign corporations (Tr. 473). As to the inadvertent failure to report his accounting fees for the tax years 1965 and 1966, Irving Talve testified as to the defendants "lack of attention," "inefficiency and erratic behavior in general" (Tr. 31); Jack Talve testified that the defendants "marital problems" caused him to be distracted (Tr. 184) and Mark Talve testified that the defendant was "beset with personal problems", was seeing a "psychiatrist" and

"was having health problems" (Tr. 230). The defendant testified on cross examination that 1966 was a "traumatic and terrible" time of his life since he had lost his "best friend," "business," "ex-wife," and "child" (Tr. 779, 940) and when cross-examined as to whether this trauma was in effect on April 13, 1967, almost a year later at a time when he prepared his 1966 return, he replied that "it sure was," and that he should have been in a mental institution (Tr. 941). Moreover, he testified that as a point of information his accounting expenses: stenographer, messenger, telephone, car depreciation and office supplies, exceeded his accounting income (Tr. 741-754).

Testimony of Three Talve Brothers

Government witness Irving Talve testified, as did the next two witnesses, Jack and Mark Talve, that all the checks GX's 3 through 18 represented severance pay, although no 1099 forms were filed (Tr. 129). He further testified he met Berliner in 1947; went to Berliner's wedding in 1949 (Tr. 60); Berliner went to his wedding in 1949 (Tr. 60) and they socialized frequently from 1949 (Tr. 61) so as to become close friends by 1952 (Tr. 61). Irving Talve testified that in 1948 Berliner became the outside accountant for I. D. Talve Trading Company (Tr. 25) and about 1958 he was employed as a part-time accountant for the Talve's new corporation, Franklin Stainless Corporation (Tr. 66), becoming its full-time accountant in 1962 (Tr. 67).

On cross examination, Irving Talve testified that I. D. Talve Trading Corporation was suspended by the federal government in 1952 for a fraudulent export license application for 2½ months (Tr. 159); that in 1953 he had two children, a four year old boy who was seriously ill, necessitating medical expenses and another child, two,

(Tr. 78); that he bought a \$12,990.00 house in 1955 (Tr. 79); that Franklin Stainless Corporation was a new corporation in 1957 so that 1958, 1959 and 1960 were the formative years (Tr. 80); that the corporation was factored by a bank in 1958 and 1959 (Tr. 82-83) and that in 1960 and 1961 he had borrowed \$200,000.00 from the bank (Tr. 83-86), part of which loan was in existence in 1962 (Tr. 86). The defendant testified that he had loaned monies personally to Irving Talve from 1952 to 1958 because his "dearest friend" was in financial difficulty due to business and family reasons (Tr. 473). The defendant testified that from 1958 through 1966 he advanced monies on behalf of the Talves' domestic and foreign corporations especially the foreign corporations since the Talves wanted to show no affiliation with the foreign corporations (Tr. 473). Moreover, Irving Talve testified on cross examination that in 1962 he told the defendant that in consideration of Berliner's financial assistance to him prior to 1960 and to the corporation thereafter, he would tell his brothers that Berliner was entitled to 10 percent of the equity of Franklin Stainless Corporation (Tr. 94). However, Jack Talve testified he had never been told this (Tr. 225).

Only through cross examination did the three Talve brothers, Irving, Jack and Mark, the first three witnesses for the government, testify as to three foreign corporations, to wit, Dorvolto, a Swiss corporation; Cias, an Italian corporation and Imperial Trading Corporation, a Bahamian corporation. Irving Talve denied any ownership or association by him or his three brothers in the three foreign corporations (Tr. 90-91), but testified that they purchased a lot of steel through Dorvolto (Tr. 90) and Cias (Tr. 91). Jack Talve testified that he had no role or stock in these three foreign corporations but that Dorvolto sells steel (Tr. 199) and Mark possibly had some stock in Cias (Tr. 200). Mark, on cross examination, testified he was a

stockholder in Cias (Tr. 262) and admitted that Irving had an interest in Dorvolto (Tr. 257) and that he and Irving (Tr. 259) had an interest in Imperial Trading Corporation. Moreover, a letter from an accountant in the Bahamas, DX E (App. 9a), indicated that Mark Talve, Jack Talve, Isadore Talve and Martin Traeger, Irving Talve's brother-in-law, were stockholders in Imperial Trading Corporation (Tr. 619).

The Accountant for Talve

The fourth witness for the Government, Abraham Spector, who became the accountant for Franklin Stainless Corporation after May of 1966 (Tr. 316), testified that the checks in evidence, GX 3 through 18, were posted either to the loan and exchange account or to the legal and professional services account (Tr. 300-309). Spector testified that on September 30, 1964, the end of the taxable year (Tr. 343, 348) and on October 1, 1964, the beginning of the taxable year (Tr. 309, 313), there was an opening and closing balance of \$295,264.28 with \$100,000.00 unaccounted for in the accounts payable (Tr. 310, 313, 343). Thus, \$195,264.28 was itemized but the remaining \$100,000.00 was not (Tr. 343). This \$100,000.00 was not deducted as an expense in the corporate return in 1964 (Tr. 314), 1965 or 1966, yet Irving Talve characterized it as being attributable to severance pay to the defendant (Tr. 313, 349) although there was no reference to the defendant in the backup schedule (Tr. 348).

Brother-in-Law of Irving Talve

Martin A. Traeger, a stockholder of Imperial Trading Corporation, DX E (App. 9a) and the brother-in-law of Irving Talve (Tr. 362) testified that, as president of Laurel Metals, he gave a \$5,000.00 check, payable to Milton

Berliner in 1965 for accounting services (Tr. 355). After Traeger, on cross examination, denied that Berliner ever advanced monies on behalf of Laurel Metals (Tr. 372) or personally loaned him monies (Tr. 372), Mr. Traeger, in explaining two personal checks issued by the defendant and made payable to and endorsed by Mr. Traeger, one for \$600.00, DX J (Tr. 374) and one for \$300.00, DX I (Tr. 375) stated that his secretary had inadvertently deposited his checks into the defendant's account and that the defendant gave Traeger his own personal checks in return (Tr. 380-381). Traeger testified that although he doubted he could have more than \$500.00 in cash on him at one time (Tr. 386), nevertheless, he could have cashed not only a \$500.00 check for Berliner, DX L, but also DX's K, M, N, O; \$750.00, \$1,000.00, \$750.00 and \$1,947.50 checks (Tr. 385-388). The defendant testified that the two checks made payable to Martin Traeger, DX J and I; the three checks made payable to Berliner and co-endorsed by Traeger DX L, M, and N, were for personal loans to Traeger (Tr. 543-545) and that the proceeds of two checks made payable to Berliner and endorsed only by him, DX K and O, were advanced to Traeger on behalf of Laurel Metals (Tr. 571-572).

Revenue Agent Schneider

Revenue agent Stanley Schneider testified that the investigation into the defendant commenced because of an examination of the Franklin Stainless Corporation books (Tr. 413) and that he spoke only to the Talve's accountant, Abraham Spector, never to any of the Talves (Tr. 414). Schneider testified that he began defendant's audit on October 24, 1968 (Tr. 415) and on December 19, 1968, requested the assignment of a special agent since he thought it was a criminal case (Tr. 416). Schneider testified he called defendant's answering service at the defend-

ant's private accounting office, located at 114 West 42nd Street on October 24, 25, 28 and 29, the last call indicated that the phone was dead (Tr. 417). On November 28, 1968, Schneider testified he sent Berliner a letter to the above mentioned accounting office and received no response (Tr. 417). The defendant testified that it was impossible to receive calls or mail at his accounting office from October 5, 1968 on since the building had been closed to the tenants and was in the process of being razed (Tr. 726-727) and that he had been living at 320 East 76th Street since 1967 at which address he received his very first notification from Internal Revenue in March 1970 (Tr. 728-729).

Testimony of Defendant

Defendant testified as to his financial resources which enabled him to loan Irving Talve monies and advance monies on behalf of the Talves' domestic and foreign corporations from 1952 through April of 1966: 1) periodic withdrawals from his personal savings accounts, the exhibits being extracts of the accounts; \$15,000.00 from Emigrant Savings Bank, DX S, from September 1952 through November 1957 (Tr. 519); \$15,000.00 from American Savings Bank, DX X, from March 1952 to September 1959 (Tr. 520); \$5,000.00 from Union Dime Savings Bank, DX T, from January 1963 to March 1964 (Tr. 522); \$2,000.00 from Long Island Savings Bank and First Federal Savings Bank, DX V, on August 21, 1964 (Tr. 524) and \$9,000.00 from Ninth Federal Savings and Loan Association, DX W, January 1955 to January 1959 (Tr. 526); 2) personal bank loans, the Exhibits being the contractual agreements (Tr. 527); on April 23, 1965, borrowed \$7,500.00 from First National City Bank, DX R (Tr. 499-501) and on May 19, 1963 borrowed \$3,000.00 from Underwriters Trust Company, DX V; 3) gifts; when his father, at age of 78, retired in 1952 after 63 years as a baker, from

1952 through 1961, he gifted defendant with \$3,000.00 per year, all which was given personally to Irving Talve (Tr. 530-532) and moreover, Julius Britenback, his multimillionaire ex-employer (Tr. 622), had gifted him with \$5,000.00 worth of GM stock which split five for one and then three for one in that year netting him approximately \$65,000.00 (Tr. 723-724); 4) loans; his sister, who was 49 years old, loaned him \$15,000.00 after she had sold a piece of property (Tr. 533), which loan he repaid on June 15, 1966 by check, DX Y, made payable to his sister (Tr. 534); his mother, who was 71 years old, loaned him \$15,000.00 in 1964 from monies left her by her husband who died in 1962 (Tr. 535) and his former employer, Julius Britenback, loaned him \$25,000.00 in 1962, \$12,500.00 of which he gave to Irving Talve (Tr. 536-537) and 5) salary; he averaged \$12,000.00 a year as salary from 1952 to 1958 (Tr. 510) and about \$15,000.00 a year from 1958 to 1962, and about \$20,000.00 a year from 1962 to 1966. Defendant testified that Irving Talve in the earlier part of his career was not able to borrow money and in the latter part did not want to jeopardize the credit rating of the corporations or tie himself in personally with the foreign corporations (Tr. 530).

The Foreign Corporations

The defendant testified that Imperial Trading Company was a Nassau corporation and that although there was no steel industry in Nassau, its purpose was to be a transmitter of funds, i.e. to move funds back and forth in order to cut or control the Talve profits as to the payment of taxes (Tr. 616). Imperial would render a false invoice to Franklin Stainless Corporation, for the fictitious purchase of steel (Tr. 619). The defendant testified that Imperial was closed out (Tr. 621) and Cias, an Italian corporation replaced it (Tr. 625) and that the three Talve brothers,

as well as Martin Traeger, were stockholders of Cias, as evidenced by the letter of the Bahamian accountant DX E (Tr. 619) (App. 9a), he testified that the purpose for which Dorvolto, the Swiss corporation was formed was that since the Italian corporation, Cias, was the trading corporation for the steel, it is the common practice in Italy to have a Swiss company, "a Swiss bank account" (Tr. 697, 689). Defendant testified he went to Italy with Mark Talve who obtained a mail forwarder to pick up Cias' mail, re-envelope it and send it to defendant's private accounting office at 112 West 42nd Street (Tr. 617). He also testified that the mail for Dorvolto was also sent to his private accounting office (Tr. 698) and the envelopes were addressed to I. D. Talve and Milton Berliner (Tr. 698). DX's GG1 through GG5 (Tr. 700) were envelopes addressed to Monsieur I. D. Talve and Milton Berliner at the above address and contained letters and/or debit advices and/or account extracts bearing the reference "Dorvolto", from a Swiss bank indicating transfers of money from the Swiss bank to its branch office in New York totaling \$358,735.14 in 1966 (App. 12a-18a). Cias mail would be brought unopened by the defendant to Mark Talve and Dorvolto mail would be brought unopened to Irving Talve (Tr. 701). The Court cautioned the jury that the question of the sources of the funds that are indicated therein is a question of fact to be determined from all of the testimony and exhibits in this case (Tr. 700). The defendant testified that he had gone to Switzerland with Irving Talve in 1962 to form Dorvolto (Tr. 703).

Defendant testified that at his first Internal Revenue interview, Intelligent Agent Dubin told him a criminal investigation was pending (Tr. 740). The defendant testified he was not shown any of his savings bank books, not requested to give documentation as to personal loans from banks, his sister, his mother and not asked to give docu-

mentation as to the gifts from his father so as to show sources of income. Furthermore, he testified that Dubin did not show him any of the GX's 3 through 18, checks construed as unreported income so as to enable him to offer specific explanations (Tr. 737-738).

Specific Explanation of All Checks

The defendant testified that he traveled to distant countries on behalf of the Talves and specifically with reference to Cias and Dorvolto (Tr. 872). He testified as to the taxable year of 1965, that GX's 3 and 5, \$500.00 and \$100.00 checks were in payment of advances he made on behalf of the Talve corporations and GX's 4 and 6, the two \$3,500.00 checks were reimbursement for two trips to Italy (Tr. 481-482). He testified that GX's 7 through 9, checks of \$2,438.38, \$3,463.68 and \$2,006.97 were repayment by the corporation of a personal loan by him from the First National City Bank since the proceeds of the loan were used to fund the Talves' anonymity as to the foreign corporations (Tr. 485).

The defendant testified as to the taxable year of 1966, that GX's 10 through 14, \$10,000.00, \$7,147.00, \$6,000.00 and \$6,000.00 checks totaling \$39,147.00 represented reimbursement for the following on behalf of Cias (Tr. 930); three trips he made to Italy which cost at least \$3,500.00 a trip, totaling about \$11,000.00 (Tr. 665, 668); the purchase of land in Italy on behalf of the Talves for \$12,000.00 (Tr. 661); Italian accounting and legal fees totaling \$1,630.00 (Tr. 662); payment of Italian taxes for stock purchases which cost \$1,625.00 (Tr. 649, 663) and payment for capitalization which cost \$11,520.00 (Tr. 650, 663). DX DD was a letter from an Italian law firm indicating the above expenses and DX FF was a deed for the land, the overall expenses being approximately \$37,000.00.

The defendant testified that he had expended \$12,500.00 for the formation and capitalization of Dorvolto and \$750.00 for legal fees (Tr. 705-706). An attorney's letter, DX HH (Tr. 707), indicated the above expenses. He testified that he had to make, on behalf of Dorvolto, three trips to Italy which cost approximately \$11,000.00 (Tr. 706). He testified that he traveled to South America and had advanced \$5,000.00 on behalf of Mark Talve (Tr. 711A). DX JJ1 and DX JJ2 were letters of introduction to individuals in South America on behalf of the Talves (Tr. 709). Moreover, the defendant testified that he had made various checks out to himself as payee, which he cashed for expenses occurred on behalf of the corporation, to wit, DX's AA5 through AA8 totaling \$2,250.00 (Tr. 570-571), DX's BB1 through BB7 and DX's BB9 and BB10 (Tr. 577, 580) totaling \$6,700.00. In addition thereto, although Mark Talve had testified that at no time did Berliner either advance monies on behalf of Horizon Forwarders or loan monies to its president, Ben Ramos (Tr. 241-244), the defendant testified to DX BB11, a \$2,500.00 check (Tr. 574) and DX AA3, a \$2,000.00 check (Tr. 569) both payable to Horizon Forwarders and endorsed by the corporation and deposited in its account; and two checks, DX AA1 for \$145.00 and DX AA2 for \$100.00 both made payable to Ben Ramos and endorsed by him (Tr. 568). These sums, when deducted from the remaining final payment of \$108,500.00, left approximately \$73,000.00, which roughly represented the monies personally loaned to Irving Talve over the years. The defendant testified that Irving Talve himself signed the last of the four checks, GX 15 through GX 18, \$50,000.00, \$25,000.00, \$25,000.00 and \$8,500.00 since his brothers directed him to do so upon discovering the full extent of Irving Talve's personal indebtedness to the defendant, thereby charging Irving Talve with those checks as his own personal obligation (Tr. 722, 934).

The Mysterious \$295,264.95

Mr. Berliner testified that if the credit side of the accounts payable in September 30, 1965 was subtracted from the debit side, it indicates an overpayment on the debit side of \$195,264.95 so that, in actuality, it was a negative accounts payable, that is, some creditor was overpaid \$195,264.95 (Tr. 868) becoming, therefore, a receivable. Thus, on September 30, 1965, the closing balance of \$295,264.95 is not a correct liability since \$195,264.95 represents a receivable (Tr. 938). He testified that although the closing balance of one taxable year should be the opening balance of the next (Tr. 938), yet, on October 1, 1965, \$100,000.00 is shown as an opening balance liability (Tr. 938). The opening balance is incorrect since it should read a \$95,264.95 receivable.

Rebuttal by Government

A Mr. Charles Schwartz testified that he paid Berliner \$200.00 in 1964 and \$200.00 again in 1967 for accounting services. On cross examination he testified that Berliner had told him he had been employed by Britenback and that Britenback was "well fixed" and had been "generous to him" (Tr. 962). Also, an Abraham Stern testified he paid Berliner in 1967 \$450.00 for accounting fees (Tr. 1068). The 1964 and 1967 returns of Mr. Berliner were introduced into evidence indicating that these accounting fees were not reported.

Patricia Gillespi, an attorney for the Regional Commissioner of Internal Revenue Service testified that she read the Report of Special Intelligence Agent Dubin and looked at the Exhibits GX 3 through GX 18 (Tr. 997), but asked for no documentation from Dubin so as to negate Berliner's loans from his mother, sister and Britenback (Tr. 1041). Furthermore, she did not inquire from Mr. Dubin as to

Berliner's savings accounts so as to determine sources of income (Tr. 1014-1015). She testified that Government Exhibits 3 through 18, the checks representing unreported income in the years 1965 and 1966 were not shown to the defendant for the purpose of explanation (Tr. 1009-1010), since it was normal procedure for the Intelligence Division, to wit, Mr. Dubin, to show the defendant these exhibits so that the defendant could offer an explanation (Tr. 1010). This, however, was not done by Mr. Dubin (Tr. 1066, 1067, 1073). She further testified she never questioned the Talves (Tr. 1017-1018), and recommended criminal prosecution based on the report and the checks submitted by Dubin (Tr. 1011, 1012). A report of her conference was received in evidence as past recollection recorded which varied from the exact amounts received and the personal sources of loans the defendant testified to at the trial.

Mr. Fred Dubin, who was the Special Intelligence Agent, testified that he started the investigation in February of 1969 (Tr. 1055) and that there was a conference on March 23, 1970 (Tr. 1040) in response to a letter of March 9, 1970 (Tr. 1054). He testified that he had photostatic copies of all bank accounts of Berliner and all the GX's 3 through 18 (Tr. 1059, 1060). Dubin testified he did not show the defendant copies of his bank accounts or checking accounts to explain sources of income (Tr. 1076-1077) and he did not show the defendant GX's 3 through 18 (Tr. 1066, 1099). He testified he never asked Berliner for documentation as to the gift from his father (Tr. 1079) or the loan from his mother (Tr. 1080) and the personal loans from banks (Tr. 1080). He further testified that he never questioned Berliner as to personal loans to Isadore Talve (Tr. 1082) or as to expenses regarding his accounting business, namely, telephone, stenographer, garage, business depreciation of defendant's car and office supplies (Tr. 1086, 1087). Dubin testified he had never heard of the foreign

corporations, to wit, Dorvolto, Cias, or Imperial Trading Corporation (Tr. 1092). Dubin further testified that all the checks GX's 3 through 18, although construed as severance pay in 1965 and 1966, were not deducted in those years by the corporations (Tr. 1106). On cross examination Dubin also testified that in 28 years as a Special Agent for Internal Revenue, he did not know of a corporation that would pay an employee $7\frac{1}{2}$ times his salary for severance pay (Tr. 1124).

Summation

In summation, defendant's counsel had referred to the "major revelation" of the case (Tr. 1149); that the "crux" of the case was the reluctance of the Talves to testify about the foreign corporations, to wit, Imperial Trading, Cias, and Dorvolto; coupled with their conflicting testimony about these corporations; that their accountant, Spector, testified to a \$295,000.00 and \$195,000.00 figure and a mysterious \$100,000.00 figure which Irving Talve said was attributable to Berliner as severance pay; that the closing figure of one year should be the opening of the next although September 30, 1965 was closed with \$295,000.00 and opened October 1, 1965 with \$100,000.00 and that the \$195,000.00 actually represented a plus and the \$100,000.00 a minus so that some time between the closing of the doors on September 30 and the opening of them on October 1, \$295,000.00 disappeared and that no deductions had been taken in 1965, 1966 and 1964 (Tr. 1182-1183) and said "well, I'll tell you where \$295,000.00 went. It went, and if the Internal Revenue wants to know, let them go to Switzerland and let them take a look at the Doryolto account." An objection was sustained, "there is no proof of that in the record whatsoever, disregard the comment, ladies and gentlemen of the jury. Mr. Rao, do not do that again," and the Court stated, "there is no proof that \$295,000.00 was deposited in any Swiss bank account in

this case." Defense counsel said, "I think it is a reasonable inference." The Court, "no, there is no reasonable inference." Mr. Rao continued with his summation unable to discuss the theory, the "crux" of his case; to wit, that the \$100,000.00 figure attributed to Berliner as severance pay was actually a coverup for monies transferred elsewhere and the explanation as to severance pay was as false in that instance as it was regarding the other sums attributed to Berliner as severance pay. At the end of his summation and out of the presence of the jury, defendant's counsel informed the Court of Exhibits GG1 through GG5 (App. 12a-18a), the envelopes addressed to Berliner and Talve, which contained documentation from a Swiss bank of funds in a Dorvolto account amounting to \$358,734.14 which were transferred to a New York branch (Tr. 1196). The Court stated, "no evidence that I can recall that \$295,000.00 or anything amounting that sum was transferred to and deposited in the Swiss bank or that there was any indication of any Swiss bank account record in its form of a transcript which showed this kind of money in the Swiss bank."

POINT I

The Court abused its discretion in restricting summation in a critical area, preventing the defense from arguing reasonable inferences legitimately drawn from the testimony and exhibits, thereby precluding counsel from developing the crucial theory of the defendant's case which was essential to the interpretation of the issues involved.

The Court has broad discretion in controlling the scope of closing arguments, but when comments are "supported by evidence of record in the case", *U. S. v. Stone*, 401 F. 2d 35, 40 (7th Cir. 1968) especially when said comments

are crucial to the theory of the defendant's case, "that discretion is abused, however, if the Court prevents defense counsel from making a point essential to the defense." *U. S. v. Sawyer*, 443 F. 2d 712, 713 (DC. 1971). The defendant's Constitutional right to present relevant, material and competent argument is part of his Sixth Amendment right to counsel and to a jury trial. Wharton, *Criminal Law and Procedure*, Note 4 at Section 1077.

The evidence had been the following: The defendant testified that Imperial Trading Corporation, a Bahamian corporation, was used as a conduit to transmit funds (Tr. 616) from Franklin Stainless Corporation in that it would submit false invoices (Tr. 617, 619) for the export of non-existing steel (Tr. 616); the defendant testified that Imperial, a Bahamian corporation, was closed out (Tr. 621) and Cias, an Italian corporation, was formed "to replace it" (Tr. 625) with Dorvolto a "Swiss Company," serving as a "Swiss Bank Account" for Cias (Tr. 697, 698); the defendant testified that Irving Talve went with him to Switzerland on behalf of Dorvolto (Tr. 703) and also that Mark Talve went to Italy with him on behalf of Cias (Tr. 627); Irving Talve testified that a lot of steel was purchased through Dorvolto and Cias (Tr. 90-91); Irving Talve testified he had no association with or ownership in Imperial Trading Corporation, Cias or Dorvolto (Tr. 90-91); Jack Talve testified that he had no role in Dorvolto or Imperial or Cias (Tr. 199); Mark Talve testified that he was associated with and a stockholder of Cias (Tr. 248) and had an interest in Imperial (Tr. 258); the defendant testified that all correspondence relative to Dorvolto and Cias was sent to Berliner's private accounting office at 112 West 42nd Street and not to the offices of any of the corporations of the Talves (Tr. 625, 698) since the Talves

wanted to show no connection with the foreign corporations and Mark Talve obtained a mail forwarder in Europe to re-envelope correspondence to said corporations and send it to defendant's accounting office (Tr. 627, 473-474, 487-488); DX's GG1 through GG5 (Tr. 699) all were envelopes postmarked from Switzerland and addressed to both Irving Talve and Milton Berliner at defendant Berliner's accounting office and all envelopes contained a letter and or debit advice and/or extract of account from a Swiss bank with the reference Dorvolto on all of them indicating transmittals and/or confirmation of the transmittals and/or balance of funds from the Dorvolto account to the New York branch of the Swiss bank (App. 12a-18a), to wit: DX GG2, contained a letter acknowledging prior transmittals of \$336,401.93 and a debit advice evidencing the cable transmittal of \$22,303.89, included in such figure; DX GG4, an extract of account as of March 11, 1966 evidencing a balance of \$73,955.32 after deducting GG2; DX GG1 a March 21 debit advice indicating a cable transfer to the New York branch of the Swiss bank of \$22,339.41; DX GG3, an extract of account as of March 25, 1966 indicating a balance of \$51,651.43 and DX GG5, an April 29 letter acknowledging that \$358,735.14 had been transmitted; all GX's 3 through 18, checks alleged to be severance pay totaled no more than \$163,256.53; Spector testified that a \$295,264.84 closing entry for September 30, 1964 which was the opening entry in the accounts payable for October 1, 1964 had an unexplained \$100,000.00 which was attributable to Berliner by Irving Talve although the backup schedule showed no specific reference to the defendant whereas it itemized \$195,264.84 (Tr. 309-314, 343, 348-349) and finally, the defendant testified that even \$195,264.84 of the \$295,264.84 figure on September 30, 1965 was a credit, an overpayment not a liability, so that the opening

figure on October 1, 1965 of \$100,000.00 liability was incorrect (Tr. 868, 938).

In summation, defendant's counsel after reminding the jury of the close relationship of the defendant and Irving Talve (Tr. 1136) and as to the financial position of Irving Talve (Tr. 1144) then referred to the major revelation in the case (Tr. 1149); the unearthing of the three foreign corporations; the reluctance of the three brothers to testify as to them and their contradictory testimony as it related to these corporations (Tr. 1149-1151). Defense counsel proceeded to review the testimony of the defendant's sources of income which enabled him to loan and advance monies (Tr. 1156, 1157); to explain individually the reasons for the issuance of GX's 3 through 18 to Berliner which checks allegedly had been claimed to be severance pay (Tr. 1160-1170). Then defense counsel mentioned the mysterious figures of Two Hundred Ninety-five some odd Thousand and One Hundred Thousand Dollars that the accountant Spector testified about (Tr. 1174), stating that this must be discussed (Tr. 1179). Defense counsel argued that although the closing figure of the one year should be the opening figure of the next year (Tr. 1182), yet, the closing figure of \$295,264.95 in September 30, 1965 became \$100,000.00 on October 1, 1965 and that \$195,264.95 was a plus and that the \$100,000.00 was a minus and that sometime after closing hours on September 30 and before opening of the doors on October 1, \$295,264.95 disappeared (Tr. 1182). Defense counsel argued there is no breakdown as to where the money went except that Spector says he attributes \$100,000.00 of it to Berliner, although no deduction was taken in 1964, 1965, or 1966 (Tr. 1183). Defense counsel argued that Agent Schneider testified the \$100,000.00 applies to severance pay for the defendant because Spector said so. Then defense counsel said, "well, I will tell you where \$295,000

went, it went . . . and if Internal Revenue wants to know, let them go over to Switzerland and let them take a look at the Dorvolto account" (Tr. 1183). There was an objection, the jury was told to disregard the comment and the defendant's counsel was told, "Mr. Rao, do not do that again, there is no proof that \$295,000 was deposited into any Swiss account in this case" (Tr. 1183-1184). Defendant's counsel stated, "I think it is a reasonable inference" (Tr. 1184).

What was said was "not only proper but necessary if the jury was to understand the significance, according to the (defendant's) theory of the case," of the reasons behind the figures of \$295,264.84 and \$195,264.84 and the true meaning of the mysterious \$100,000.00 so that defendant's counsel was "entitled to argue the inferences to be drawn from its proofs" especially since it was "legitimate argument" *U. S. v. Numan*, 236 F. 2d 576, 591 (2nd Cir. 1956). There can be no question upon considering the evidence, both verbal and physical that there was "substance to this interpretation" and that "the inference" was "proper" so that the jury was "entitled to infer" what the defendant contended. *U. S. v. Defilio*, 257 F. 2d 835, 840 (2nd Cir. 1958). The statement of counsel and the logical argument that would have followed were and would have been relevant and essential to the issues at hand, being a fair verbal analysis in an attempt to persuasively inform the jury. Indeed the statement had a strong foundation in the evidence.

The Supreme Court stated in *Tot v. U. S.*, 319 U. S. 463, 467, 63 SC 1241:

"The jury is permitted to infer from one fact the existence of another . . . if reason and experience support the inference. In many circum-

stances, Courts hold that proof of the first fact furnishes a basis for inference of the existence of the second."

Here there were many facts upon which to premise the argument. For since Imperial Corporation was used to divert funds and Cias replaced it having Dorvolto serve as the Swiss bank account for Cias, and since the proof established that over \$338,000.00 had been transferred from the Dorvolto Swiss bank account to the New York branch of said bank, DX's GG1 through GG5, the remarks of defendant's counsel were totally predicated upon existing facts disclosed by the evidence and were completely legitimate inferences that the trial record clearly substantiated in order to support the theory of the defendant's case. The argument was not beyond the scope of the evidence so as to be an unwarranted inference; especially considering the contradictory and evasive testimony of the Talve brothers as to the foreign corporations so that it was obviously a reasonable inference deductible from the evidence that was adduced at the trial.

Defense counsel must be permitted "fair comment on appropriate inferences to be drawn from the evidence." *U. S. v. Grant*, 462 F. 2d 28, 35 (2nd Cir. 1972). When an argument is premised upon evidence, both verbal and physical, that had been admitted, "counsel has the right to comment on any matter brought to the attention of the jury." *Johnson v. U. S.*, 347 F. 2d 803, 805 (DC. 1965).

Most significantly, it was critical to the defense for the jury to understand they were free to accept the inference that monies attributable to Berliner as income could very well have been monies diverted to Switzerland for the personal profit of the Talves so that the explanation as

to severance pay was a further deception by the Talves. To bar the defendant from arguing this deprived the defendant of the core of his defense, to wit, that the monies attributable to Berliner was an accounting device to conceal its true significance. If the defendant may not argue as to how the evidence is "best to be received." *White v. U. S.*, 394 F. 2d 49, 55 (9th Cir. 1968), then a jury, "is not entitled to reach its verdict not only upon the evidence actually produced before it but also upon such inference as reasonable persons might draw from the evidence." Mathes and Devit; Federal Jury Practice and Instruction, Sec. 8:03, 8:04; *U. S. v. Romano*, 382 U. S. 136, 141, 86 SC. 279. Consequently "within broad limits, counsel for both sides are entitled to argue the inferences which they wish the jury to draw from the evidence." *U. S. v. Debrizzi*, 393 F. 2d 642, 646 (2nd Cir. 1968).

Immediately after defense counsel summation and out of the presence of the jury, defense counsel again stated that it was a proper inference and called the Court's attention to Exhibits GG1 through GG5 (Tr. 1196; App. 12a-18a). The Court stated "no evidence that I can recall that there was \$295,000 or anything approximating that sum transferred to and deposited in the Swiss bank, or that there was any evidence of any Swiss bank account record in the form of a transcript which showed that kind of money in that Swiss bank. Under those conditions, I felt it was improper summation." The Court was in error on a crucial issue relative to the theory of the defense which the evidence in the case warranted and necessitated and which theory of defense the jury was told to disregard and defense counsel was directed not to bring to the jury's attention again.

CONCLUSION

Based on the foregoing, it is respectfully submitted that a new trial be ordered in the interests of justice, since the prejudicial preclusion by the Court of reasonable inferences in summation, drawn from the evidence, which were competent, material and relevant, but most significantly crucial to the theory of defendant's case, denied the defendant his right to a fair trial.

Respectfully submitted,

PAUL P. RAO, JR.,
Attorney for Defendant-Appellant.

ADDENDUM

TITLE 26, U. S. CODE

§7201. Attempt to Evade or Defeat Tax

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution. Aug. 16, 1954, c. 736, 68 A Stat. 851.

§7206. Fraud and False Statements

Any person who—

(1) Declaration under penalties of perjury.—Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter.

AMENDMENT VI: JURY TRIAL FOR CRIMES, AND PROCEDURAL RIGHTS

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and District wherein the crime shall have been committed, which District shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

APPENDIX TO APPELLANT'S BRIEF



Docket Entries

- 3-23-72 Before Judd, J.—Indictment filed.
- Apr 5 1972 Before Travia, J., (Illegible)—Adj'd to 4-13-72 on consent.
- Apr 13 1972 Before Travia, J., (Illegible) Deft & counsel present. Deft waives reading of indictment. Deft arraigned & enters a plea of not guilty. 30 days for motions. Deft on own recognizance.
- 4-13-72 Notice of appearance filed.
- 4-27-72 File 72M823 inserted into criminal file.
- 8-10-72 Government's notice of readiness for trial filed.
- 3-21-74 Notice of motion for an order granting an adjournment of the trial from 4-15-74 to any date from 4-29-74 or thereafter ret. 4-8-74
- 4-8-74 Before Costantino—Case called—No opposition to motion for an order granting an adjournment of the trial from 4-15-74 to any date from 4-29-74 or thereafter, motion granted—Case set down for trial 5-20-74 at 10:00 A.M.
- 4-15-74 Before Costantino J—case called & adj'd to May 20, 1974 for trial.
- 4-30-74 Before Costantino, J. — Case called — Adj'd to 5-3-74 at 10:00 A.M. for trial
- 5-20-74 Before Costantino J—case called & respectfully referred to Judge Platt for all purposes and adj'd to May 23, 1974.
- 5-24-74 Before Platt, J.—Case called—Set down for trial 6-17-74 at 10:00 A.M.
- 6-17-74 Before Platt, J.—case called—adj'd to June 24, 1974 for trial.

Docket Entries

- 6-24-74 Before Platt, J.—Case adjd to 6-26-74 at 10:00 A.M. for trial
- 6-26-74 Before Platt, J.—case called—trial ordered and Begun—Jurors selected and sworn—Trial continued to June 27, 1974.
- 6-27-74 Before Platt, J.—case called—trial resumed—Trial continued to June 28, 1974
- 7-1-74 Before Platt, J.—Case called—Trial resumed—Deft's motion for judgment of acquittal—Motion denied—Trial cont'd to 7/2/74
- 7-2-74 Before Platt, J.—Case called—Defts and counsel present—Trial resumed—Trial contd to 7-3-74
- 7-3-74 Before Platt, J.—Case called—Deft and counsel present—Trial resumed Trial contd to 7-9-74
- 7-9-74 Before Platt, J.—Case called—Deft and counsel present—Trial resumed—Trial contd to 7-10-74
- 7-10-74 Before Platt, J.—case called—trial resumed—jury retires to deliberate at 3:40 PM—trial contd to July 11, 1974.
- 7-11-74 6 volumes of stenographic transcripts filed (pgs 1 to 1127)
- 7-11-74 Before Platt, J.—case called—trial resumed—jury returns at 4:35 PM and renders a verdict of guilty on counts 1, 2, 3, 4—jury polled and jury discharged—trial concluded—sentence adjd without date.
- 7-11-74 By Platt, J.—Order of sustenance filed.
- 7-25-74 Stenographers Transcript dated 7-10-74 and 7-11-74 filed

Docket Entries

- 8-30-74 Before Platt, J.—Case called—Deft and counsel present—Sentence adjd to 9-20-74 at 10:00 A.M.
- 9-20-74 Before Platt, J.—Case called—Deft and counsel present—Sentence adjd to 10-18-74
- 10-18-74 Before Platt, J.—case called—deft & counsel P. Rao Jr. present—deft is sentenced to 2 years imprisonment on counts 1 to 4, to run concurrently on condition that the deft be committed to a jail type institution or treatment institution for a period of 4 mos, the execution of the remainder of sentence is suspended and the deft is placed on probation for 3 years upon condition that he pay all the income taxes alleged to be due and owing to the Federal Govt. Court recommends the institution at Danbury, Conn. Bail contd pending appeal.
- 10-18-74 Judgment & Commitment filed—certified copies to Marshal.
- 10/24/74 Notice of appeal filed
- 10/24/74 Docket entries and duplicate of notice of appeal mailed to court appeals
- 10/24/74 Govt's requests to charge filed
- 10/24/74 Deft's request to charge filed

Indictment

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

◆
[SAME TITLE]
◆

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 15th day of April, 1966, within the Eastern District of New York, the defendant Milton Berliner, a resident of Queens County, New York, wilfully and knowingly attempted to evade and defeat a large part of the income taxes due and owing by him and his wife Frances Berliner to the United States of America for the calendar year 1965, by filing and causing to be filed with the District Director of Internal Revenue for the Internal Revenue District of Brooklyn, New York, a false and fraudulent joint tax return on behalf of himself and his wife wherein it was stated that their taxable income for the said calendar year was the sum of Twelve Thousand and Forty-Two Dollars and Forty-eight Cents (\$12,042.48), and that the amount of tax due and owing thereon was the sum of Two Thousand, Two Hundred and Seventy Dollars and Sixty-One Cents (\$2,270.61), whereas, as he then and there well knew, their taxable income for the said calendar year was the sum of Thirty-Seven Thousand, Three Hundred and Sixty-Four Dollars and Seventeen Cents (\$37,364.17), upon which said taxable income they owed to the United States of America an income tax of Ten Thousand Nine Hundred and Fifty-

Indictment

Three Dollars and Eighty-Eight Cents (\$10,953.88).
(§7201 Internal Revenue Code; Title 26, United States Code, §7201.)

COUNT TWO

On or about the 15th day of April, 1967, within the Eastern District of New York, the defendant Milton Berliner, a resident of Queens County, New York, wilfully and knowingly attempted to evade and defeat a large part of the income taxes due and owing by him and his wife Lee Berliner to the United States of America for the calendar year 1966, by filing and causing to be filed with the District Director of Internal Revenue for the Internal Revenue District of Brooklyn, New York, a false and fraudulent joint tax return on behalf of himself and his wife wherein it was stated that their taxable income for the said calendar year was the sum of Thirteen Thousand and Three Hundred and Six Dollars and Four Cents (\$13,306.04), and that the amount of tax due and owing thereon was the sum of Two Thousand and Five Hundred and Eighty-Six Dollars and Fifty-One Cents (\$2,586.51), whereas, as he then and there well knew, their taxable income for the said calendar year was the sum of One Hundred Sixty-Three Thousand and Fifty-Six Dollars and Fifty-Four Cents (\$163,056.54), upon which said taxable income they owed to the United States of America an income tax of Eighty-Five Thousand, Six Hundred and Fifty-Eight Dollars and Forty-Five Cents (\$85,658.45.) (§7201 Internal Revenue Code; Title 26, United States Code, §7201.)

COUNT THREE

On or about the 15th day of April, 1966, within the Eastern District of New York, the defendant Milton

Indictment

Berliner, a resident of Queens County, New York, did wilfully and knowingly make and subscribe a United States Income Tax Return for the calendar year 1965, Form 1040, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the District Director of Internal Revenue for the Internal Revenue District of Brooklyn, New York, which said United States Income Tax Return, Form 1040, he did not believe to be true and correct as to every material matter in that the said United States Income Tax Return, Form 1040 stated that the adjusted gross income of the defendant Milton Berliner and his wife Frances Berliner was Nineteen Thousand One Hundred and Forty-Six Dollars and Seventy-Five Cents (\$19,146.75), whereas, as he then and there well knew, their adjusted gross income for the said calendar year was Forty-Five Thousand Eight Hundred and Eighteen Dollars and Forty-Four Cents (\$45,818.44). (§7206(1) Internal Revenue Code; Title 26, United States Code, §7206(1).)

COUNT FOUR

On or about the 15th day of April, 1967, within the Eastern District of New York, the defendant Milton Berliner, a resident of Queens County, New York did wilfully and knowingly make and subscribe a United States Income Tax Return for the calendar year 1966, Form 1040, which was verified by a written declaration that it was made under the penalties of perjury and was filed with the District Director of Internal Revenue for the Internal Revenue District of Brooklyn, New York, which said United States Income Tax Return, Form 1040, he did not believe to be true and correct as to every material

Indictment

matter in that the said United States Income Tax Return, Form 1040, stated that the adjusted gross income of the defendant Milton Berliner and his wife Lee Berliner was Twenty-Six Thousand Two Hundred and Twenty-Five Dollars and Five Cents (\$26,225.05), whereas, as he then and there well knew, their adjusted gross income for the calendar year was One Hundred and Seventy-Eight Thousand Two Hundred and Twenty-Five Dollars and Fifty-Five Cents (\$178,225.55). (§7206(1) Internal Revenue Code; Title 26, United States Code, §7206(1).)

A True Bill.

.....
Foreman.

.....
United States Attorney
Eastern District of New York

Defendant's Exhibit E

(Letterhead of)

TOUCHE, ROSS, BAILEY & SMART

CHARTERED ACCOUNTANTS

P. O. Box 1612

Nassau, Bahama Islands

Cable Address "Trobas"

October 24, 1961

Mr. Mark Taave
4 Munson Street
Croton on Hudson
New York, U. S. A.

Dear Sir:

I have received your letter dated October 13, 1961.

In my letter dated January 23, 1961 I enclosed copies of the statement that must be filed with the Bahamian Registry following the holding of the annual general meeting of the company. I now enclose a number of additional copies.

Suppose you hold the annual general meeting of the company on November 2nd, the statement must reflect the position of same on the 14th day thereafter or in other words be applicable to the 16th November.

The first box of the form calls for the names of the members of the company and addresses and occupations. When Messrs. Higgs and Johnson incorporated the company five shares of £1 each were issued on November 23, 1960 as follows:

Defendant's Exhibit E

<i>Name</i>	<i>Address</i>	<i>Occupation</i>	<i>Shares</i>
Godfrey W. Higgs	Nassau, Bahamas	Barrister-at-Law	1
Beverley Honess	" "	Secretary	1
Jack A. Moree	" "	Clerk	1
Mary June Gillis	" "	Typist	1
Shirley Roberts	" "	Secretary	1

On January 3, 1961 these shares were transferred to Mark Talve, Isadore Talve, Jack Talve, Robert Catarevas, and Martin Trager, all of New York but whose occupations were not stated. Provided therefore that there has been no change in the members since that date these five names with their occupations should be entered on form and 1 share entered in the final column.

I have no information that would enable me to answer questions 1 through 7 on the form but I would suppose that the company was set up with an authorized capital of £1,000 divided into 1,000 shares of £1 each. If this is correct you have the answers to questions 1 and 2. If no further shares have been issued then the answer to question 3 is 5. Questions 4, 5, 6 & 7 need not be answered since the five shares issued originally would have been fully paid.

In the lower box of the form I would presume that the names of Higgs, Honess, Moree, Gillis and Roberts will appear, all of Nassau, Bahamas and described as above.

On the reverse side of the form the names, addresses and occupations of Directors and Members is called for and it is my understanding that Mark Talve, Isadore Talve, Jack Talve, Robert Catarevas and Martin Trager were elected Directors on November 23, 1960. Provided that these

Defendant's Exhibit E

Directors still represent the company, their names, addresses and the position they hold in the company should be inserted as representing their occupations. Presumably these are a President, a Vice President, a Treasurer and a Secretary leaving one Director without any specific title. The Bahamian Registry requires notification of changes in Directors or Officers as they occur; this should be carefully noted should changes be made at some later date. Underneath the names, addresses etc. of Directors or Managers the company's seal must appear and the statement signed by the company's Secretary.

I regret that I cannot fill in the form since we do not have copies of Directors minutes or other relevant information that would establish the position of the company in these regards. I am again presuming that the Articles of Association of the company permit Directors meetings and Stockholders meetings to be held anywhere in the world and are not restricted to the Bahama Island. If this is the case, it would be wise for your records to reveal a periodic meeting of Directors at which the general development of the company's business could be recorded by a statement by the President. The annual stockholders meeting should be held in accordance with the terms of the articles of association and may call for the members to be given so many days' notice of the holding of the meeting and the meeting itself should reflect the names of the members present and should possibly reappoint the same Directors for the following financial period and may waive the presentation of financial statements and if the Articles of Association call for the appointment of Auditors with right given to the stockholders to waive such a requirement then the requirement should be waived.

Defendant's Exhibit E

It is not necessary to file copies of the minutes nor financial statements with the Bahamian Registry but in my view it is important that such corporate records should be in existence at all times.

At the beginning of this letter I suggested November 2 as a suitable date for the holding of the stockholders meeting but this can be held any time prior to the end of 1961.

The above information is intended to assist you to carry out what is required but is given without responsibility on our part since the terms of our engagement call for providing a registered office for the company but without the appointment of anyone in our organization as an officer of the company who under such circumstances might be considered responsible for the filing of this return.

If what I have written is clear to you and you will send me the completed form, I will be pleased to file it with the Bahamian Registry.

Yours very truly,

K. A. M. COOKSON
K. A. M. Cookson

KAMC:cm

Defendant's Exhibit GG-1

(Envelope)

Par Avion

By Air Mail—Luftpost

Monsieur I. D. TALVE
Milton Berliner
112 West 42nd St.
NEW YORK N. Y. USA

(Emblem—1872)

SOCIÉTÉ DE BANQUE SUISSE
SCHWEIZERISCHER BANKVEREIN
SWISS BANK CORPORATION

1000 Lausanne, 21st March 1966. -corr. Réf.
Téléphone (021) 21 48 01 Télex 24 871

Avis de débit/Belastungsanzeige/debit advice
Votre lettre du/lhr Schreiben vom/Your letter of

4th March 1966 IDT:s

247.6006/9

E2

DORVOLTO S.A.

Nous avons débité votre compte comme suit:

Wir haben Ihr Konto wie folgt belastet:

We have debited your account as follows:

Val.

\$usa	22,333.21	18.3
	6.20	

\$usa	22,339.41	
-------	-----------	--

Defendant's Exhibit GG-1

Amount which we transferred, by cable, to
our New York branch for your account.
Cable charges

Vos dévoués/Hochachtungsvoll/Yours truly
Société de Banque Suisse/Schweizerischer Bankverein
Swiss Bank Corporation

Cet avis ne porte qu'un visa
Diese Anzeig tragt nur ein Visum
This advice bears a visa only
Visa—(Illegible)

Defendant's Exhibit GG-2

(Envelope)

Par Avion
By Air Mail—Luftpost

Monsieur I. D. TALVE
Milton Berliner
112 West 42nd St.
NEW YORK N. Y. USA

(Emblem)

SOCIÉTÉ DE BANQUE SUISSE
SCHWEIZERISCHER BANKVEREIN
SWISS BANK CORPORATION

1000 Lausanne, 9th March, 1966. corr. Réf.
Téléphone (021) 21 48 01 Télex 24 871

Avis de débit Belastungsanzeige debit advice
Votre lettre du/Ihr Schreiben vom/Your letter of

19th January 1966. IDT:s.

247.606/9

E2

DORVOLTO S.A.

Defendant's Exhibit GG-2

Nous avons débité votre compte comme suit:
Wir haben Ihr Konto wie folgt belastet:
We have debited your account as follows:
Val.

\$USA. 22,297.69
6.20

\$USA. 22,303.89 7.3

Amount which we have transferred to our
New York office by cable for your account.
Charges.

Vos dévoués/Hochachtungsvoll/Yours truly
Société de Banque Suisse/Schweizerischer Bankverein
Swiss Bank Corporation

Cet avis ne porte qu'un visa
Diese Anzeig tragt nur ein Visum
This advice bears a visa only
Visa—(Illegible)

Defendant's Exhibit GG-2

(Letterhead of)

(Emblem—1872)

SOCIÉTÉ DE BANQUE SUISSE
Schweizerischer Bankverein Società di Banca Svizzera
Swiss Bank Corporation

E2

DORVOLTO S.A.,

Service: Corr. JPM.

Your ref: IDT:s.

Lausanne, 9th March 1966.

Gentlemen,

We acknowledge receipt of your letter dated 4th instant, with which you instruct us to remit, by cable, to the debit of your account with us, an aggregate sum of not exceeding:

\$usa 370,000.—

concerning draft(s) which may be presented for payment no later than 25th April 1966, to our New York branch by Messrs. Michael Kral Co., New York City, through their bankers, Brown Brothers Harriman & Co., New York City. The above amount includes the figure of \$usa 358,000.—hitherto authorised with your letter to us dated 19th January 1966.

For your guidance we inform you that we have paid to date, under the authorisation in question, amounts totalling \$usa 336,401.93, including the attached debit advice.

We shall revert to your instructions as and when necessary, and in the meantime, remain, Gentlemen, with pleasure at your entire disposal,

Very truly yours,

SWISS BANK CORPORATION.

(Illegible)

1 encl.

Defendant's Exhibit GG-3

(Envelope)

Par Avion

By Air Mail—Luftpost

Monsieur I. D. TALVE
 Milton Berliner
 112 West 42nd St.
 NEW YORK N. Y. USA

(Emblem—1872)

SOCIÉTÉ DE BANQUE SUISSE
 SCHWEIZERISCHER BANKVEREIN
 SWISS BANK CORPORATION

70 Exeraît en capitaux
 Postenauszug
 Extract of account
 No de compte
 Kontonummer
 Account number 247'606.9

DORVOLTO S. A. E2

Feuille 1

Lausanne —25.03.1966

<i>Date</i>	<i>Text</i>	<i>Debit</i>	<i>Credit</i>	<i>Val.</i>
	Sold Reporte		51'651.43	
22.03	Transfert	22'239.41		18.03
	\$USA		29'312.02	

Defendant's Exhibit GG-4

(Envelope)

Par Avion

By Air Mail—Luftpost

Monsieur I. D. TALVE
 Milton Berliner
 112 West 42nd St.
 NEW YORK N. Y. USA

(Emblem—1872)

SOCIÉTÉ DE BANQUE SUISSE
 SCHWEIZERISCHER BANKVEREIN
 SWISS BANK CORPORATION

70 Extrait en capitaux
 Postenauszug
 Extract of account

No de compte
 Kontonummer
 Account number 247'606.9

DORVOLTO S.A. E2

Feuille 1

Lausanne —11.03.1966

<i>Date</i>	<i>Text</i>	<i>Debit</i>	<i>Credit</i>	<i>Val.</i>
	Solde Report		73'955.32	
10.03	Transfert	22'303.89		07.03
		<hr/>	<hr/>	
	\$.USA		51'651.43	

Defendant's Exhibit GG-5

(Envelope)

Par Avion

By Air Mail—Luftpost

Monsieur I. D. TALVE
Milton Berliner
112 West 42nd St.
NEW YORK N. Y. USA

(Emblem—1872)

(Letterhead of)

SOCIÉTÉ DE BANQUE SUISSE
Schweizerischer Bankverein Società di Banca Svizzera
Swiss Bank Corporation

E2

DORVOLTO S.A.

Service: Corr. JPM.

Lausanne, 29th April 1966.

Gentlemen,

We refer to your letter dated 4th March last, when you instructed us to remit, by cable, to the debit of your account with us, an aggregate sum of not exceeding \$usa 370,000.— concerning draft(s) which might be presented for payment, no later than 25th April 1966, to our New York branch by Messrs. Michael Kral Co., New York City, through their bankers, Brown Brothers Harriman & Co., New York City. This amount included the figure of \$usa 358,000.— hitherto authorised with your letter to us dated 19th January 1966.

For your guidance, and as the authorisation has now lapsed, we inform you that a total of \$usa 358,735.14 was paid following your above instructions.

With pleasure at your disposal, we remain, Gentlemen,

Very truly yours,

SWISS BANK CORPORATION
(Illegible)

Judgment and Commitment

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

[SAME TITLE]

On this 18th day of October, 1974 came the attorney for the government and the defendant appeared in person and with counsel.

It is adjudged that the defendant upon a verdict of guilty has been convicted of the offense of violating T-26, U. S. Code, Secs. 7201, 7206(1) in that on or about April 15, 1966 to on or about April 15, 1967 the defendant, willfully and knowingly attempted to evade and defeat a large part of the income taxes due and owing by him and his wife to the U. S. A. for the calendar years of 1965, 1966, 1967 by filing a false and fraudulent tax returns on behalf of himself and his wife, to the District Director of Internal Revenue for the Internal Revenue District of Brooklyn, New York, as charged in counts 1 to 4 incl., and the courts having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the court.

It is adjudged that the defendant is guilty as charged and convicted.

It is adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of 2 years

Judgment and Commitment

on counts 1, 2, 3, 4 to run concurrently on condition that the defendant be confined in a jail-type or treatment institution for a period of 4 months, the execution of the remainder of the sentence is hereby suspended and the defendant is placed on probation for a period of 3 years upon condition that he pay all the income taxes alleged to be due and owing to the federal government and subject to the standard conditions of probation as set forth in the standing order of this court dated October 13, 1964. Bail continued pending appeal.

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

THOMAS C. PLATT,
United States District Judge.

.....
Acting Clerk.

Notice of Appeal

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

Before:

HON. THOMAS C. PLATT,

District Judge, and a Jury.

72 Cr. 341

UNITED STATES OF AMERICA,

Appellee,

against

MILTON BERLINER,

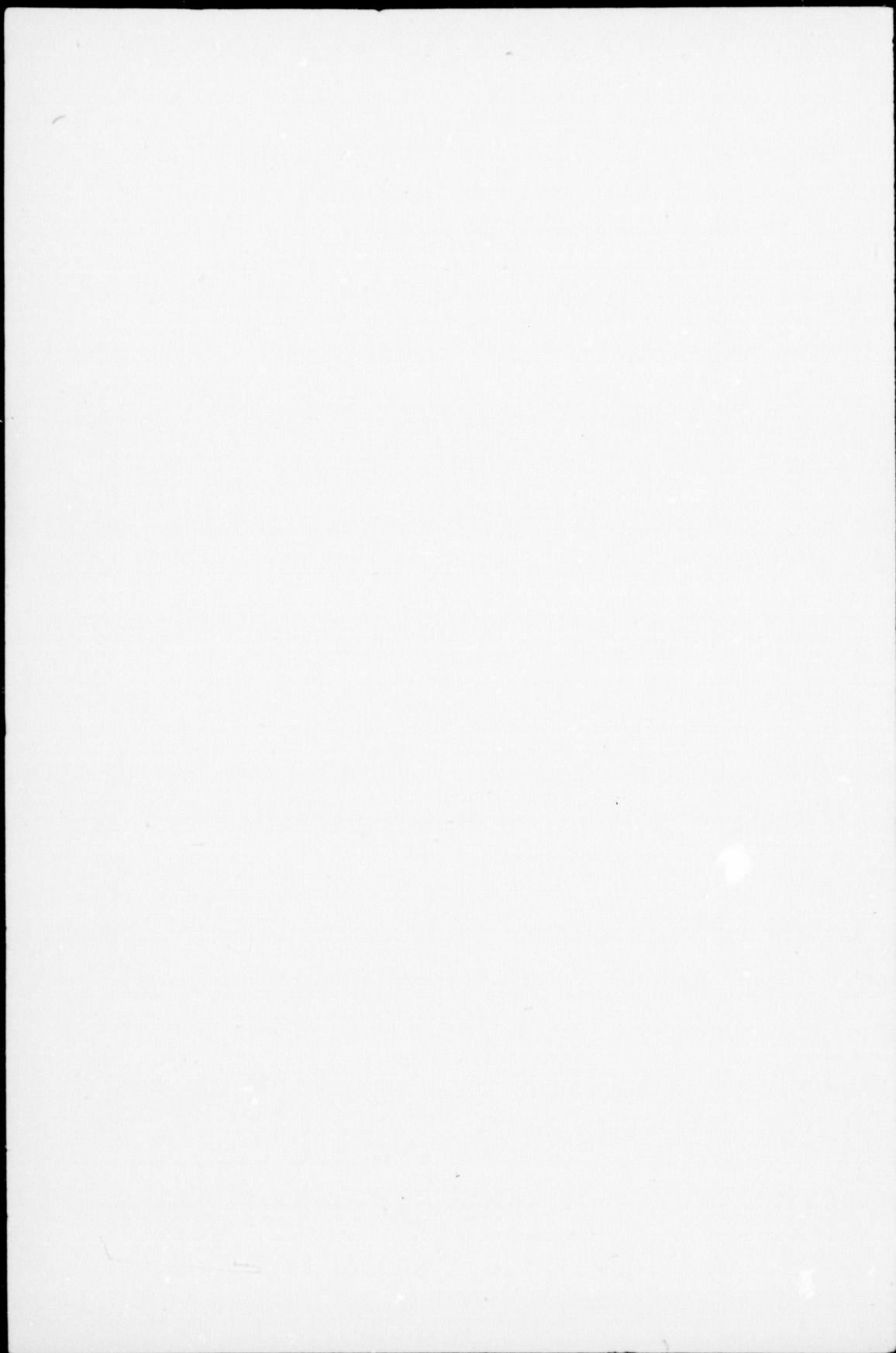
Defendant-Appellant.

The Name and Address of the Appellant: Milton Berliner, 370 East 76th Street, New York, New York.

The Name and Address of the Appellant's Attorney: Paul P. Rao, Jr., 233 Broadway, New York, New York.

The Offense Involved: Violation of Sections 7201 and 7206 (1) Internal Revenue Code; Title 26, United States Code.

Notice is hereby given that Milton Berliner, the Defendant above named, hereby appeals to the United States Court of Appeals of the Second Circuit from the verdict



Notice of Appeal

of guilty on July 11, 1974 in the United States District Court of the Eastern District of New York on all counts 1 through 4, of the indictment and from the judgment of December 30, 1971 and from the sentence on said judgment.

Dated: October 24, 1974

PAUL P. RAO, JR.,
Attorney for Defendant-Appellant,
Office and P. O. Address,
233 Broadway,
New York, N. Y. 10007.
(212) 964-8866

To:

DAVID G. TRAGER
United States Attorney for
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Due and timely service of two (2) copies of
the within is hereby admitted this
3rd day of Dec., 1974

Attorney for

for U.S. atty
Sylvia E. Morris

RECEIVED
U.S. ATTORNEY

DEC 3 2 00 PM '74

EAST. DIST. N.Y.

